

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

BRUCE D. JEFFERSON,
Petitioner

v.

CHRISTOPHER EDDY, ET AL.
Respondents

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Civil No. 3:03CV1238 (CFD)

RULING AND ORDER

The petitioner, Bruce D. Jefferson, is currently an inmate at the MacDougall Correctional Institution in Suffield, Connecticut. He brings this action pro se for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his June 2000 state court conviction. For the reasons set forth below, the petition is dismissed without prejudice.

Procedural Background

Jefferson alleges in his amended petition that, in June 2000, in the Connecticut Superior Court for the Judicial District of Hartford, he pleaded guilty to burglary, robbery, forgery, larceny, trespassing, and assault in the third degree. The court sentenced Jefferson to twelve years' imprisonment followed by eight years of "special parole." Jefferson did not file a direct appeal of his conviction.

Jefferson did file a petition for writ of habeas corpus in the Connecticut Superior Court for the Judicial District of Hartford. He raised two grounds in his state habeas petition: (1) his "sentence is illegal" and (2) counsel rendered ineffective assistance. Jefferson states in his amended petition here that the state habeas petition is still pending.

The first question to be determined is whether Jefferson has exhausted the claims he has brought in the instant petition in the Connecticut State Court.

Exhaustion of State Remedies

A prerequisite to habeas relief under section 2254 is the exhaustion of all available state remedies. See O’Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Rose v. Lundy, 455 U.S. 509, 510 (1982); Daye v. Attorney General of the State of New York, 696 F.2d 186, 190 (2d Cir. 1982), cert. denied, 464 U.S. 1048 (1982); 28 U.S.C. § 2254(b)(1)(A). The exhaustion requirement is not jurisdictional; rather, it is a matter of federal-state comity. See Wilwording v. Swenson, 404 U.S. 249, 250 (1971) (per curiam). The exhaustion doctrine is designed not to frustrate relief in the federal courts, but rather to give the state court an opportunity to correct any errors in the state criminal process. See id. Ordinarily, the exhaustion requirement has been satisfied if the federal issue has been properly and fairly presented to the highest state court either by collateral attack or direct appeal. See O’Sullivan, 526 U.S. at 843 (citing Brown v. Allen, 344 U.S. 443, 447 (1953)). “[T]he exhaustion requirement mandates that federal claims be presented to the highest court of the pertinent state before a federal court may consider the petition.” Pesina v. Johnson, 913 F.2d 53, 54 (2d Cir. 1990).

The Second Circuit requires the district court to conduct a two-part inquiry. First, the petitioner must have raised before an appropriate state court any claim that he asserts in a federal habeas petition. Second, he must “utilize[] all available mechanisms to secure appellate review of the denial of that claim.” Lloyd v. Walker, 771 F. Supp. 570, 573 (E.D.N.Y. 1991) (citing Wilson v. Harris, 595 F.2d 101, 102 (2d Cir. 1979)). A petitioner must present his federal constitutional claims to the highest state court before a federal court may consider the merits of the claims. See Grey v. Hoke, 933 F.2d 117, 119 (2d Cir.

1991). “[S]tate prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the state’s established appellate review process.” O’Sullivan, 526 U.S. at 845.

Discussion

The petitioner raises two grounds in his amended petition here. He claims that (1) his attorney (Mr. Eddy) was ineffective in representing him in the state criminal proceeding, and (2) the prosecutor (the other defendant, Thomas Garcia) engaged in malicious prosecution when he failed to permit Jefferson to stay the criminal proceeding or to undergo a competency evaluation prior to jury selection. Jefferson alleges that although he did not appeal his conviction, he claims that he has raised both of these grounds in his pending state habeas petition. However, this conflicts with his description of the claims that he raised in his state habeas petition; it is not clear that he raised the claim of malicious prosecution in his state petition.

In any event, it is clear that Jefferson has not alleged that he has fully exhausted his state court remedies as to either ground prior to filing this habeas petition. Because the petitioner has not exhausted his state court remedies as to either of the claims in the federal petition, the petition is dismissed.¹

¹The Court notes that the Second Circuit has cautioned the district courts not to dismiss a mixed petition containing exhausted and unexhausted claims when an outright dismissal would preclude the petitioner from having all of his claims addressed by the federal court. The Second Circuit advised the district court to stay the petition to permit the petitioner to complete the exhaustion process and return to federal court. See Zarvela v. Artuz, 254 F.3d 374, 380-83 (2d Cir. 2001) (recommending that the district court stay exhausted claims and dismiss unexhausted claims with direction to timely complete the exhaustion process and return to federal court “where an outright dismissal ‘could jeopardize the timeliness of a collateral attack.’”).

Unlike the circumstances of Zarvela, neither ground for relief here has been exhausted. Thus, this is not a mixed petition. The Court concludes that the rationale requiring that a habeas petition be

Conclusion

The amended petition for writ of habeas corpus [Doc. # 4] is DISMISSED without prejudice. The petitioner may re-file his federal habeas petition after he has exhausted his state court remedies. The Clerk is directed to enter judgment and close this case.

The Supreme Court has held that,

[w]hen the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, a [certificate of appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). In addition, the Court stated that “[w]here a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.” Id. This Court concludes that a plain procedural bar is present here; no reasonable jurist could conclude that the petitioner has exhausted his state court remedies or that the petitioner should be permitted to proceed further. Accordingly, a certificate of appealability will not issue.

SO ORDERED this ____ day of January 2004, at Hartford, Connecticut.

CHRISTOPHER F. DRONEY

stayed is not applicable to this case, as a refiled petition would not be deemed a second or successive petition. See Slack v. McDaniel, 529 U.S. 473, 485-87 (2000).

UNITED STATES DISTRICT JUDGE